HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1344 (S/S) year 2003

Ashok Kumar Mishra

Versus

Union of India and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 4.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1344 (S/S) 2003

Ashok Kumar Mishra **….Petitioner**

Vs.

Union of India and Others ….Respondents.

Counsel for the petitioner Sh. Ram Ji Srivastava

Date-4.11.2003

Hon'ble Rajesh Tandon, J.

Heard Shri Ram Ji. Srivastava Learned Counsel for the petitioner and the Learned Standing Counsel for the respondents.

Brief facts giving rise to the present writ petition are that the petitioner was appointed as Deputy Inspector of School on 17-4-1984 on the basis of pay scale of Rs. 540.00 per month and he was posted at District Almora on the said post.

The grievance of the petitioner is that in the year 1992 when the U.P. Hill Sub-Cadre Rules where enforced the petitioner had given his option for his posting in the plain cadre.

Counsel for the petitioner has further submitted that his wife namely Smt. Sonu Mishra is an Assistant Teacher (L.T. Grade) and at present she is posted at Government Girls Higher Secondary School, Afjalgarh, District Bijnor (Uttar Pradesh).

The petitioner has also referred the Government order dated 17.11.1992, which provides that the employees of the Education Department can change their cadre after marriage. Relevant paragraph of the G.O. is quoted below: -

" जिस संवर्ग से स्थानान्तरण वांछित हो, वहॉ के संवर्ग से स्थानान्तरण के पश्चात सम्बन्धित अध्यापक का संम्बन्ध नही रह जायेगा और वहॉ की ज्येष्ठता सूची से असका नाम काट दिया जायेगा।"

"विवाह हो जाने के फलस्वरूप पति अथवा पत्नी में से किसका संवर्ग परिवर्तन होगा, का अन्तिम निर्णय शिक्षा निदेशक द्धारा किया जायेगा।"

Counsel for the petitioner has submitted that the wife of the petitioner namely Smt. Sonu Mishra is a Assistant Teacher (L.T. Grade) and at present she is posted at Government Girls Higher Secondary School, Afjalgarh, District Bijnor (Uttar Pradesh).

The petitioner has further stated that he has made a representation on 20-8-2002 for relieving him for the state of U.P. on the basis of option submitted in the year 1986 for the plain cadre.

The petitioner has further stated that before the creation of Uttaranchal State, on 28-9-2002 the option was invited and the petitioner has again given his option for the state of U.P. The same is still pending and no decision has taken place.

Relevant paragraphs of the writ petition with regard to the option as well as the posting of the wife are quoted in paragraphs 6,7 and 8 which are quoted below:-

<u>Paragraph</u> 6-" That it is also stated here before creation of Uttaranchal State. The Head of All Department of then State of Uttar Pradesh called for option from their employees to the respective States and the petitioner again submitted his option for the State of Uttar Pradesh on 28-9-2000, which is still pending with the respondents and, therefore, the petitioner could not be finally

allocated the State of Uttar Pradesh. For the kind perusal of this Hon'ble Court a true copy of the option dated 28-9-2000 is being annexed herewith and is marked as Annexure No. 3 to this writ petition."

Paragraph 7-"That it is also stated here that the wife of petitioner namely Smt. Sonu Mishra is an Assistant Teacher (L.T. Grade) and at present she is posted at Government Girls Higher Secondary School, Afjalgarh, District Bijnor(Uttar Pradesh). A certificate has also been issued by the Principal of institution to the wife of petitioner to this effect. For the kind perusal of this Hon'ble Court a true copy of the certificate of Smt. Sonu Mishra is being annexed herewith and is marked ***as Annexure NO.4 to this writ petition."***

Paragraph 8-"That since the wife of petitioner namely Smt. Sonu Mishra is posted in District Bijnor (Uttar Pradesh) and the petitoner is posted in District Pithoragarh(Uttaranchal) and due to this the life of petitioner became disturbed and the petitioner was compelled to make a representation to the respondent no. 4 on 20-8-2002 requesting him to relieve the petitioner for the State of Uttar Pradesh on the basis of option, submitted by the petitioner in the year 1986 for plain cadre. The said representation was duly forwarded by Deputy District Basic Shiksha Adhikari, Pithoragarh on 20.8.2002 for the kind perusal of this Hon'ble Court a true copy of the representation dt.20-8-2002 is being annexed herewith and is marked as Annexure No.5 to this writ petition."

Counsel for the petitioner has further stated that the petitioner on 20.8.2003 and 16.9.2003 has made representations for relieving him for the state of U.P. in pursuance of the Government order 17-11-1992 as well as for considering his option dated 20-8-2002 for the plain cadre. The relevant paragraph to that effect is quoted below:-

"That when the respondents have not taken any decision into the representation made by the petitioner on 20-8-2003, then on 16-9-2003 the petitioner made another representation to the respondent no.s 3 and 4 requesting them to relieve the petitioner for the State of Uttar Pradesh in pursuance of the Government order dt. 17-11-1992 and the option, submitted by the petitioner for plain cadre. The said representation was highly recommended by Deputy District Basic Shiksha Adhikar, Pithoragarh on 16.9.2003. For the kind perusal of this Hon'ble Court a true copy of the representation dt. 16-9-2003 is being annexed herewith and is marked as Annexure No.6 to this writ petition."

Deputy District Basic Shiksha Adhikari, Pithoragarh on 16.9.2003 has made a recommendation on the representation of the petitioner to the following effect: -

प्रर्थी सहायक बेसिक शिक्षा अधिकारी के पद पर विकासखण्ड गंगोलीहाट, जनपद पिथौरागढ़ में कार्यरत हैं। प्रार्थी की पत्नी श्रीमती सोनू मिश्र, एल0टी0वेतनक्रम में राजकीय कन्या उच्चतर माध्यमिक विद्यालय, अफजनगढ, जनपद विजनौर में कार्यरत है। प्रार्थी ने उत्तर प्रदेश का विकल्प भरा है, परन्तु विकल्प के आधार पर प्रार्थी को आज तक उत्तर प्रदेश नहीं भेजा गया है। अलग–अलग प्रदेशों में पति पत्नी के कार्य करने के कारण पारिवारिक कठिनाईयों का सामना करना पड़ रहा है। संलग्न शासनादेश सं0–4506/15–2–92–27/37/79 टी0सी0 दिनांक 17 नवम्बर, 1992 के अनुसार साथ–साथ रहने के उददेश्य से संवर्ग परिवर्तन/स्थानान्तरण की सुविधा का प्रावधान है। अतः अपसे सानुरोध प्रार्थना है कि मेरे द्धारा भरे गये विकल्प/शासनादेश सं0–4506/15–2–92–27/37/79 दिनांक 17 नवम्बर, 1992 के तहत मुझे उत्तर प्रदेश में कार्य करने हेतु कार्यमुक्त / सानिान्तरित करने की कृपा करें। प्रार्थी जीवनोपर्यनत आपका आभारी रहेगा।

So far as the policy of the government for posting of the husband and wife at one place has also made applicable in the transfer

matters. The Divisional Bench of the Allahabad High Court in 1996 vol 2 A WC has held as under. The same is quoted below:-

In Deepa Vashishtha Vs. State of U.P. and others 1996 Vol.1 page-269 reliance has been placed on the judgment of the Apex Court in Secretary U.T. Chandigarh V Darshjit Singh Grewal and others, JT 1993 (4) SC 387, their Lordships have ruled the policy guidelines are the executive directions. The observations are quoted below:-

" Taking into account the human considerations and social needs, the aforesaid guidelines have been framed and the basic idea behind it is the whole set up of the family may not be disturbed notwithstanding the fact that said guidelines are not in imperative form. Thus, it needs consideration with positive approach till the policy is not changed or amended in view of the decision in Home Secretary, U.T. Chandigarh's case (supra) JT 1993(4) SC 387 and if it is not possible to keep husband and wife at one place, cogent reasons in such cases are expected to be assigned so that transferee husband or wife, as the case may be, able to know the reasons. If any policy has been framed and still operative, the executive actions are expected to be inconformity with the same and not to negate it. In other words, in the grab of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the husband and wife to a different place since the guidelines are not in imperative form or they have no force of law. If the administrative exigencies or public interest so requires, certainly husband and wife may transferred to different places but only in exceptional cases, i.e. rarest of rare cases, for which no illustration can be given."

Section 73 of the Uttar Pradesh Reorganization Act, 2000 provides that every person shall continue to serve provisionally and

thereafter the Central Government shall determine the final allocation. for service. Section 73 (1), (2), (3) reads as under: -

"Provisions relating to other services. – (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this Sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State, shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

The advisory committee has been constituted under Uttar Pradesh Reorgnaization act 2000 by virtue of section 76 of the act. It reads as under:-

"Advisory Committees.- The Central Government ma, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to –

(a) the discharge of any of its functions under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

Counsel for the petitioner has also referred section 77 of the Uttar Pradesh Reorganization Act 2000 with referred to the power of the Central Government. It reads as under: -

"Power of Central Government to give directions- The Central Government may give, such directions to the State Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

The grievance of the petitioner is that they may be directed to be relieved in pursuance of sub-clause 2 of section 73 for State of Uttar Pradesh where they have given their option.

In Writ Petition No.457 (S/B) 2003 Udai Pratap Singh Vs. State of U.P. the Divisional Bench of this court has passed the following order:-

" Under Section 73(2), the Central Government is given the power to allocate the cadres by general or special order of allotment between the two States. Section 76 provides for setting up of an Advisory Committee to assist the Central Government. By the impugned order dated 11th September 2002, the Central Government has issued directions allocating the various cadres between the two states. The Central Government has issued these directions pursuant to the authority given by the Legislature to the Central Government."

" The Central Government had constituted an Advisory Committee under Section 76. That Committee submitted its report on 28th April 2001/ 10th May 2001. Their report has been accepted by the Central Government as indicated by letter dated 4th September 2001 (annexure-4). We may clarify that the report of the Advisory Committee has not been fully accepted by the Central Government."

The Division Bench in Writ Petition No. 451(S/B)/2003 Narendra Kumar Vs. State of Uttaranchal has passed the following ordser:-

"Under Section 73 of the U.P. Reorganization Act, 2000, final allocation of all State Services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

Similar matter was also decided by the Bench consisting of Hon'ble P.C. Verma J. His Lordship has passed the following order:-

"Heard Learned Counsel for the parties. The controversy is squarely covered by the order passed by Division Bench of this Court in W.P. No. 1426 (S/B) of 2001, Mulayam Singh Vs. State of Uttaranchal and others, on 3-6-2003. The petitioners are also relegated to approach the Advisory Board with fresh representation and same be disposed of as observes in the aforesaid writ petition. With the aforesaid observations, the writ petition is disposed of."

Counsel for the petitioner has stated that inspite of various representations of the petitioner he has not been relieved for the State of U.P. and the central government has not passed the final allocation with regard to the cadre of the petitioner for the State of U.P.

In the light of the aforesaid observations, the advisory committee of the Union of India is directed to decide the representations of the petitioner within a period of 6 weeks.

The representations along with his option shall be considered by the advisory committee of the Union of India for relieving him for the State of U.P.

The Counsel for the Union Of India has submitted that the advisory committee of the Central Government is taking suitable steps to finally allocate the person who have given their options for the State of U.P.

The representations of the petitioner along with the option shall be considered by the advisory committee of the Union of India for relieving the petitioner for the State of U.P. The representation of the petitioner shall be disposed of within a period of 6 weeks from the date of certified copy of the order.

With the aforesaid observations the writ petition is disposed of. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated:- 04-11-2003

Mohit